5 How. 43 (defendant absent from residence); 2 Pomeroy, *Eq. Remedies*, sec. 663. This rule is of course subject to the usual qualification that equity will act only when common law procedure affords no adequate remedy. *Knight v. Creswell* (1907) 82 Ark. 330, 101 S. W. 754. Where the record at law is regular on its face, there is a conflict of authority as to whether a meritorious defense must be shown before an injunction will be granted. The majority rule seems to require such a showing. *Jeffery v. Fitch* (1879) 46 Conn. 601; *Bernhard v. Idaho Bk.* (1912) 21 Idaho 598, 123 Pac. 481; *contra, Cooley v. Barker* (1904) 122 Iowa 440, 98 N. W. 289. The persuasive argument of the minority is that the complainant is deprived of his property without due process of law, and on this ground an injunction should be granted independently of any other consideration. 2 Pomeroy, *Eq. Remedies*, sec. 667. But it would seem that the hearing before the court of equity would give him his day in court. In the principal case there was no difficulty on this point, as the facts alleged showed a complete defense to any liability on the note. Nor is it any bar to equitable relief in such cases that the plaintiff at law was innocent of any wrongdoing or unfairness. *Jeffery v. Fitch, supra;* 2 Pomeroy, *Eq. Remedies*, sec. 663.

JUDGMENTS — PERSONS CONCLUDED — RIGHTS OF ABSENTEE PRESUMED TO BE DEAD.—The defendant was the depositary of an employees' savings fund. The particular deposit in question was payable upon the death of the depositor to his sons or, if they were not living, to his legal representatives. His executrix demanded payment, the sons having been absent and unheard of for 18 years. From a judgment for the plaintiff the defendant appealed on the ground that such judgment would not protect it from having to pay again to the sons, should they subsequently appear. *Held,* that the judgment for the plaintiff was correct, with a *dictum* that payment thereunder would protect the defendant. *Maley v. Pennsylvania R. R. Co.* (1917, Pa.) 101 Atl. 911.

See COMMENTS, p. 943.

NEGLIGENCE—ACTING IN EMERGENCY.—The defendant company in constructing a dam pumped water into a chute whence it was discharged into the river causing a swift current. The deceased, an employee of the defendant and an expert swimmer, fell into the chute, was carried into the river and was drowned. In a suit for wrongfully causing his death, the negligence complained of was that a fellow employee attempted to give aid to the deceased instead of immediately stopping the pumps and thus abating the current. *Held,* that a verdict for the defendant was properly directed. *Kelch's Adm'r v. National Contract Co.* (1918, Ky.) 199 S. W. 796.

Negligence is a relative term dependent upon the circumstances under which one acts or fails to act. In an emergency, one who acts according to his best judgment, even though the event proves that he failed to choose the most judicious course, is not chargeable with negligence. Such act or omission may be called a mistake but not carelessness. *Brown v. French* (1883) 104 Pa. 604; *Floyd v. Philadelphia R. R. Co.* (1894) 162 Pa. 29, 29 Atl. 396. The question usually arises in cases where the defendant seeks to escape liability on the ground that the injured plaintiff was guilty of contributory negligence in choosing the wrong way to protect himself from the impending danger. See *Geary v. McCreary* (1912) 147 Ky. 254, 143 S. W. 1004. *Dicta* in certain Iowa cases seem to indicate a tendency to confine the emergency rule to such situations. See *Boice v. Des Moines City Ry. Co.* (1911) 153 Iowa 472, 477; 133 N. W. 657, 659. But other courts have applied the rule to defendants acting with mistaken judgment in an emergency which they have not caused. *Sekerak v. Jutte* (1893) 153 Pa. 117, 25 Atl. 994. It is submitted there is no sound basis for limiting the rule to the defence of contributory negligence. The effect of